



ALAN WILSON  
ATTORNEY GENERAL

June 06, 2022

Howard M. Knapp  
Executive Director  
South Carolina Election Commission  
P.O. Box 5987  
Columbia, SC 29250

Dear Director Knapp:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

The South Carolina State Election Commission (SEC) writes regarding the meaning of "duly elected" under S.C. Code § 7-17-250.

All partisan candidates for elective office must present the notice of candidacy and pledge required by S.C. Code § 7-11-210. These notices must be presented to the appropriate election commission and include a statement that they are (or will be) qualified for the office for which they seek election. There is no provision in that code section that the election commission to which the statement is provided must otherwise verify that the candidate is qualified for the office sought. Political parties conducting primaries must certify that the party's candidates in a primary are qualified for the office they are seeking.

Political parties nominating candidates by party primary must verify the qualifications of those candidates prior to certification to the appropriate election commission of the names of candidates to be placed on primary ballots. The written verification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for office for which he has filed. A political party must not certify any candidate who does not or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office for which the candidate has filed, and such candidate's name shall not be placed on a primary ballot.

S.C. Code § 7-13-40 (quoted in pertinent part and emphasis added).

Once partisan candidates have been nominated via a primary election, their respective parties must certify them to be placed on ballots for general and special elections:

[T]he nominees in a party primary or party convention held under the provisions of this title by any political party certified by the commission for one or more of the offices, national, state, circuit, multi-county district, countywide, less than countywide, or municipal to be voted on in the general election ... must be placed upon the appropriate ballot for the election as candidates nominated by the party by the authority charged by law with preparing the ballot if the names of the nominees are certified, in writing, by the political party ... for general elections held under Section 7-13-10 ... and for a special or municipal general election ....

Political parties nominating candidates by primary or convention must verify the qualifications of those candidates prior to certification to the authority charged by law with preparing the ballot. The written certification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office for which he has filed. Any candidate who does not, or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office for which he has filed shall not be nominated and certified, and such candidate's name shall not be placed on a general, special, or municipal election ballot.

S.C. Code Ann. § 7-13-350 (quoted in pertinent part and emphasis added).

Taken together, these provisions appear to require political parties to verify the qualifications of their candidates and certify those qualifications to the SEC, but do not otherwise appear to require the SEC to determine whether a candidate certified by a party for a primary, general, or special election is qualified for the office sought.

By contrast, when a non-partisan candidate is nominated to run for elective office by petition:

The authority to whom a petition is submitted must verify that qualifications of each potential petition candidate prior to certification of that candidate to be placed on the ballot. The written certification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office for which the petition is submitted. Any candidate who does not, or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office sought shall not have his name placed on the ballot.

S.C. Code § 7-13-351 (quoted in pertinent part, and with emphasis added).

This provision appears to require a board of elections to which a petition is presented to affirmatively verify that the presenting candidate is qualified for the office sought before the candidate's name will be placed on a ballot.

With regards to primaries, once parties have certified their primary candidates to the SEC, the SEC and the county boards will place the candidates' names on ballots and conduct the primary elections. See S.C. Code § 7-13-15. When the primary elections have been conducted, the various county boards of voter registration and elections will convene as the respective county boards of canvassers for primaries, canvass the votes in the primary, and transfer the results to the SEC sitting as the Board of State Canvassers. See S.C. Code § 7-17-510. Thereafter the Board of State Canvassers will convene, canvass the votes "and declare the results of the primaries and [any] runoffs . . ." Id.

After a general or special election, the county boards of elections will convene as the county boards of canvassers, canvass the votes, and forward the results to the SEC sitting as the State Board of Canvassers. See S.C. Code Ann. §§ 7-17-20, 7-17-100. The State Board must then make a certified statement of all votes cast:

The Board when thus formed shall, upon the certified copies of the statements made by the boards of county canvassers, proceed to make a statement of the whole number of votes given at such election for and against constitutional amendments and other questions and issues and for the various officers, including electors for President and Vice-President and for each of them voted for,

distinguishing the several counties in which they were given. They shall certify such statements to be correct and subscribe the same with their proper names.

S.C. Code § 7-17-240.

Thereafter, “[u]pon such statements the Board shall then proceed to determine and declare what persons have been duly elected to such offices.” S.C. Code § 7-17-250. Finally, “[t]he Board shall make and subscribe, on the proper statement, a certificate of their determination and shall deliver the same to the Secretary of State.” S.C. Code § 7-17-290.

With regards to general and special elections, the law appears to require a ministerial role of the SEC when sitting as the State Board of Canvassers, mostly limited to collecting the certified statements of election results from the various county boards, verifying that they are accurate, declaring the results, and certifying the results to the Secretary of State. However, a question remains about the scope of the SEC's duties implied by S.C. Code § 7-17-250 and that code section's requirement that the State Board of Canvassers shall “determine and declare what persons have been duly elected.”

The SEC presents the following scenario to the Attorney General: The SEC, sitting as the State Board of Canvassers, has received the results of an election that has been certified to it pursuant to S.C. Code § 7-17-20. The State Board has been made aware of facts or circumstances that indicate a candidate so certified is not statutorily qualified for the office for which he has been presented. Under this scenario, the SEC asks this question of the Attorney General: Can such a candidate be considered to have been “duly elected” under S.C. Code § 7-17-250?

Finally, in a follow up conversation your office clarified this scenario contemplates no election protest is raised under Chapter 17 of Title 7 of the South Carolina Code of Laws nor is there a related proceeding before our state courts. And so, this Office understands the question raised to be, in the absence of a contested case, does S.C. Code § 7-17-250 place a duty on the State Board of Canvassers to assure itself that the person who would be declared the winner of an election meets the legal qualifications to hold that specific office?

#### Law/Analysis

It is this Office's opinion that our state courts would likely hold the language “determine and declare what persons have been duly elected” in S.C. Code § 7-17-250 does not require the State Board of Canvassers (the “Board”) to determine whether a person is qualified to hold the

office in the absence of a contested or protested case. As described in the letter above, the role of a state board of canvassers is generally understood to be limited to verifying the records provided to it are correct and declaring the results. For instance, the Supreme Court of Iowa described the role of the state boards of canvassers as follows:

It is true that the canvass by the State Board of Canvassers of the abstracts of the election returns filed by the County Auditors is one of the statutory steps in an election for public office, ... Its duty is the ministerial or administrative one of ascertaining and verifying that record and declaring the result as it was shown upon the face of the abstracted returns. State ex rel. Rice v. Marshall County Judge, 7 Iowa 186, 198; Jones v. Fisher, 156 Iowa 582, 586, 137 N.W. 940; 9 C.J. page 1275, 12 C.J.S., Canvass, p. 1114; 20 C.J. page 199, section 251. In 20 C.J. page 200, section 255, it is stated: "Where there is no question as to the genuineness of the returns or that all of the returns are before them, the powers and duties of the canvassers are limited to the mechanical or mathematical function of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained." Many cases are cited in support of the text. Wells v. Robertson, 277 Ill. 534, 539, 115 N.E. 654; Campbell v. Hunt, 18 Ariz. 442, 452, 162 P. 882; Lansdon v. State Board of Canvassers, 18 Idaho 596, 602, 111 P. 133; State v. Osburn, 24 Nev. 187, 188, 51 P. 837, 838; McCreary on Elections, 3d Ed., section 226, and many other authorities announce this rule.

Davies v. Wilson, 229 Iowa 100, 294 N.W. 288, 290–91 (1940). With this understanding of the state board of canvassers' historically limited role, we next look to how our state statutes frame the Board's duties.

We have been unable to locate a prior opinion issued by our state courts or this Office interpreting the directive "to determine and declare what persons have been duly elected to such offices" in S.C. Code § 7-17-250. This opinion, therefore, will analyze this statute and related statutes in Title 7, Chapter 17, Article 3 of the South Carolina Code of Laws establishing the role of the Board, according to the principles of statutory construction. When interpreting a statute, the primary goal is to determine the General Assembly's intent. See Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Further, "[a] statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). Where statutes deal with the same subject matter, it is well established that they "are *in pari materia* and must be construed

together, if possible, to produce a single, harmonious result.” Penman v. City of Columbia, 387 S.C. 131, 138,691 S.E.2d 465,468 (2010).

The language used in the directive to “determine and declare what persons have been duly elected to such offices” section 7-17-250 suggests the General Assembly intended that the Board evaluate the conduct of the election, rather than the candidates’ qualifications. First, Black’s Law Dictionary lists “duly” as an adverb and is defined to mean “in a proper manner; in accordance with legal requirements.” DULY, Black’s Law Dictionary (11th ed. 2019); see also The American Heritage Dictionary 425 (3rd ed. 1993) (Duly is defined as “1. In a proper manner. 2. At the expected time.”); Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/duly> (“in a due manner or time: properly”). Because “duly” is an adverb it can modify a verb, adjective, or other adverb, but not a noun; in the phrase “duly elected to such offices,” duly modifies or describes the word “elected.” Therefore, the directive to “declare what person have been duly elected” can reasonably be interpreted to mean that the Board is to evaluate whether the election was conducted in accordance with legal requirements and who received the most votes for a given office.

The structure of Title 7, Chapter 17, Article 3 also suggests the Legislature did not intend for the Board to determine qualifications for office when declaring whether a person was duly elected in section 7-17-250. Section 7-17-240 requires the Board “to make a statement of the whole number of votes given” at an election based “upon the certified copies of the statements made by the boards of county canvassers.” S.C. Code § 7-17-240. Section 7-17-250 then states that “[u]pon such statements” the Board declares what persons have been elected to office. The Board’s declarations are, therefore, informed by these statements which numerically address the electorate’s preference, not a person’s qualifications for office.

As noted in the letter above, verification of a candidate’s qualifications is statutorily required much earlier than when the state board of canvassers declares what persons have been elected to office. Section 7-13-40 requires political parties to “verify the qualifications” of candidates prior to placing the names of candidates on primary ballots. Section 7-13-350 requires political parties nominating candidates by primary or convention to verify the qualifications of those candidates before certification and further states that “Any candidate who does not, or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office sought shall not have his name placed on the ballot.” Finally, non-partisan candidates’ qualifications are similarly verified by a board of elections before being placed on the ballot. S.C. Code § 7-13-351. These statutes establish that the General Assembly intended for the bodies charged with verifying the qualifications of candidates to do so before general and special elections are held, before the names are added to the ballots, and even before the names are added to a primary ballot. See Tempel v. S.C. State Election Comm’n, 400 S.C. 374, 735 S.E.2d 453 (2012) (holding a special primary election is required to replace a political party’s

erroneously certified nominee prior to the general election).<sup>1</sup> Certainly, had the General Assembly intended for the Board to conduct a final verification of qualifications before declaring who has been elected to office in section 7-17-250, it would have said so more directly as in the statutes discussed above.

This is not to say that the Board or our state courts may not be asked to examine a persons the qualifications to hold office when there is a contested or protested case. Section 7-17-250 establishes the Board's capacity to hear decide contested or protested cases.

The Board shall act in an appellate judicial capacity in all cases contested or protested that come before it on appeals from county boards of canvassers.

Appeals from decisions of the State Board shall be taken directly to the Supreme Court on petition for a writ of certiorari only based on the record of the State Board hearing and shall be granted first priority of consideration by the Court. Notice of appeals shall be served within ten days of the Board's decision. Provided, however, that when a contest or protest concerns the election of a State Senator, appeals from decisions of the State Board shall be only to the Senate and when the election of a member of the House of Representatives is concerned, the appeal shall be only to the House of Representatives.

S.C. Code § 7-17-250. Section 7-17-260 describes how such cases are filed and served.

The state board shall decide all cases under protest or contest that may arise in the case of federal officers, state officers, members of the State Senate and the State House of Representatives, and offices involving more than one county. Any such protest or contest shall be filed in writing with the chairman of the board, together with a copy for each candidate in the race, not later than noon five days following the canvassing of the votes for such offices by the board... The protest shall contain each ground thereof concisely stated separately. The chairman of the board shall forthwith serve upon each candidate in the protested race a copy of the protest and serve a notice of the time and place of the meeting of the board for the

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<sup>1</sup> The Tempel Court interpreted S.C. Code § 7-11-55 to permit a political party to replace an erroneously certified primary winner instead of "frustrating the party's political participation."

It is clear from the face of the statute [S.C. Code § 7-11-55] that the General Assembly intended to provide a mechanism for political parties to replace nominees prior to the general election. It is equally clear that the General Assembly would not have intended for "disqualified" to be interpreted so narrowly that a political party is prevented from conducting any special primary to replace its nominee due to the improper certification of a nominee.

purposes of hearing the protest. A protest or contested case heard by the state board pursuant to Chapter 17 of Title 7 shall be considered an “administrative action” pursuant to Section 15-36-10.

S.C. Code Ann. § 7-17-260 (emphasis added); see also S.C. Code § 7-17-270 (detailing hearing procedure for protests and providing for appeals to the South Carolina Supreme Court). In Jones v. S.C. Republican Party, 425 S.C. 339, 822 S.E.2d 333 (2018), the South Carolina Supreme Court explained that the administrative procedures in Title 7 grant the county boards of canvassers and the State Board of Canvassers jurisdiction to hear election protests. In a case challenging a person’s qualifications to hold a particular office, the courts also have jurisdiction to declare whether a person satisfies the legal qualifications to hold a particular office.<sup>2</sup> Therefore, while a court may hold that section 7-17-250 does not require the Board to review a winning candidate’s qualifications *sua sponte*, there are clearly means for interested parties to bring such a challenge themselves. The Board’s duty to declare what persons have been duly elected to office does not foreclose administrative or judicial review.

### Conclusion

As is discussed more fully above, it is this Office’s opinion that our state courts would likely hold the language “determine and declare what persons have been duly elected” in S.C. Code § 7-17-250 does not require the State Board of Canvassers (the “Board”) to determine

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<sup>2</sup> The Jones Court explained that where a challenge to a candidate’s holding office does not require invalidating an election, such as where the legal qualifications for office are not met, the state’s election boards do not have exclusive jurisdiction.

Article V, section 11 of our Constitution provides, “The Circuit Court shall be a general trial court with original jurisdiction in civil ... cases, except those in which exclusive jurisdiction shall be given to inferior courts ....” S.C. Const. art. V, § 11. The Uniform Declaratory Judgments Act provides, “Courts of record ... shall have power to declare rights, status and other legal relations,” § 15-53-20, and, “Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper,” § 15-53-120. Pursuant to article V, section 11 and the Declaratory Judgments Act, therefore, the circuit court has the power to declare whether a person meets the legal qualifications to serve in an elected office. See Gantt v. Selph, 423 S.C. 333, 336, 814 S.E.2d 523, 524-25 (2018) (holding the circuit court had the power to declare whether a candidate for school board met the legal qualifications to hold the elected office); see also Tempel v. S.C. State Election Comm’n, 400 S.C. 374, 382, 735 S.E.2d 453, 457 (2012) (affirming the circuit court’s disqualification of a state senate nominee for his failure to comply with filing requirements). If the circuit court determines the person does not meet those legal qualifications, the court has the power to enjoin the person from serving.



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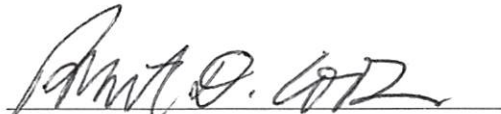
whether a person is qualified to hold the office in the absence of a contested or protested case. While a court may hold that section 7-17-250 does not require the Board to review a winning candidate's qualifications *sua sponte*, there are clearly means for interested parties to bring such a challenge themselves. See S.C. Code §§ 7-17-250 *et seq.* The Board's duty to declare what persons have been duly elected to office does not foreclose administrative or judicial review. See Jones v. S.C. Republican Party, 425 S.C. 339, 822 S.E.2d 333 (2018) (explaining differing circumstances where election boards have exclusive jurisdiction versus when courts have jurisdiction to determine whether a person satisfies the legal qualifications for office).

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



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